IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENE CHRISTOPHER SMITH AND CAROLINE ANN SMITH, on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	**CIVIL ACTION**
v.	:	**NO. 98-CV-5360**
FIRST UNION MORTGAGE CORPORATION AND HUTCHENS, McCALLA, RAYMER & ECHEVARRIA,	:	**(CLASS ACTION)**
Defendants.	:	

MEMORANDUM ORDER

Presently before the court are plaintiffs' unopposed Motion for Approval of Class Action Settlement and Award of Incentives to the Representative Plaintiffs (Doc. #44) and unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses (Doc. #45). The court held a hearing on the motions on October 25, 1999 and received from counsel by letter of November 29, 1999 additional pertinent information regarding the precise amount available for distribution to claiming class members.

As set forth in memorandum orders of July 19, 1999 and August 23, 1999, the court preliminarily approved the parties' settlement agreement and provisionally certified the class herein. The court found, inter alia, that the requirements of

numerosity, commonality, typicality and adequacy of representation as well as predominance and superiority were satisfied and that certification pursuant to Fed. R. Civ. P. 23(b)(3) appeared to be appropriate. Upon final review, the court can discern nothing which would alter or affect its initial analysis and concludes that final class certification is appropriate.

Proper notice of the action and proposed settlement was timely provided by mail to all class members except four who had previously released all claims against the defendants. An opportunity was provided at the hearing for any class member to present objections.

The court has determined that the proposed settlement would be reasonable, fair and adequate in the circumstances after weighing the pertinent factors. See In re Prudential ins. Co. of America Sales Litigation, 148 F.3d 283, 316-17 (3d Cir. 1998).

Absent a settlement, this case would have entailed considerable motion practice involving reasonably complex issues resulting in significant time and expense. Any trial would almost certainly be lengthy and involve the expenditure of even greater resources.

There has been no negative reaction by the class. Only one class member has opted out and none has objected to the settlement in any way.

The agreement was executed after meaningful discovery and at a point in the proceedings where the respective strengths and weaknesses of the parties' positions could be intelligently assessed.

The case involves some open and fairly debatable legal questions and an appreciable risk in establishing legal liability particularly as to defendant First Union.

There would be an appreciable risk in establishing more than nominal damages.

The risk that the class action could not be maintained through trial is minimal.

The ability of defendant Hutchens, McCalla to withstand a greater judgment is dubious.

The settlement is within a reasonable range in view of the likelihood of any significantly better recovery and all of the attendant risks of litigation.

It is uncontroverted that the representative plaintiffs made a personal commitment of time, effort and funds without which this socially beneficial litigation could not have been maintained and which directly benefitted the class. The awards requested appear to be commensurate with the burdens they undertook and are in line with such awards in comparable cases.

The court has an obligation to review the reasonableness of attorney fees in class action settlements even

in the absence of any objection and whether they come from a common fund or will otherwise be paid. See Zucker v. Occidental Petroleum Corp., 192 F.3d 1323, 1328-29 (9th Cir. 1999). Counsel cite an array of statutory fee-shifting cases for the proposition that a fee award need not be proportionate to the recovery. This is a well established principal. These cases, however, involve the payment of fees by an adverse party and not from funds which would otherwise be paid to the prevailing attorney's clients. In such circumstances, the protection afforded by a defendant with interests adverse to plaintiffs' counsel is not present. See Report of the Third Circuit Task Force on Court Awarded Attorney Fees, 108 F.R.D. 237, 255 (1985).

The fact remains that counsel achieved a good result for the claimants. Also, meritorious FDCPA litigation provides some social benefit beyond the monetary recovery by the particular claimants. Had the case been prosecuted to conclusion with a comparable result, counsel would have qualified for a lodestar fee under the FDCPA. Had the parties structured a settlement whereby each claimant who received an offending collection letter would receive almost $900 and class counsel would be paid a lodestar fee by defendant capped at $200,000, this would be quite reasonable. The practical effect of the parties' agreement is essentially the same. The fees sought actually amount to less than 70% of the lodestar figure which is

supported by detailed time records and affidavits. The court finds that the request is reasonable.

The claimed costs are supported by appropriate documentation and also appear to be reasonable.

ACCORDINGLY, this day of December, 1999, IT IS HEREBY ORDERED that the Motion for Approval of Class Settlement and Award of Incentives and the Motion for Award of Attorneys' Fees and Expenses are GRANTED.

BY THE COURT:

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JAY C. WALDMAN, J